



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SEP 22 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Jack Thomas
[REDACTED]
Kennesaw, GA 30144

RE: MUR 5814
Jack Thomas

Dear Mr. Thomas:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting you may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). On September 13, 2006, the Commission found reason to believe that you violated U.S.C. §§ 432(b)(3) and 439a(b), provisions of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.



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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed Designation of Counsel form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

We look forward to your response.

Sincerely,



Michael E. Toner
Chairman

Enclosures
Factual and Legal Analysis
[Redacted]
Designation of Counsel Form
Procedures

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENT: Jack Thomas**

MUR: 5814

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7 **I. INTRODUCTION**

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9 This matter was generated based on information ascertained by the Federal Election
10 Commission (the "Commission") in the normal course of carrying out its supervisory
11 responsibilities. See 2 U.S.C. § 437g(a)(2).

12 **II. FACTS**

13 Information obtained by the Commission indicates that on or about January 2004,
14 candidate Robert Bruce Lamutt was alerted by a Lamutt for Congress ("Lamutt Committee" or
15 "Committee") staffer to unspecified problems with the campaign's finances. At some point
16 thereafter, Lamutt apparently confronted his campaign manager, Jack Thomas, who confessed to
17 having stolen campaign funds. The available information indicates that the Lamutt Committee
18 instituted an internal financial audit and referred the matter to the Department of Justice ("DOJ").
19 DOJ launched an investigation and subsequently prosecuted Thomas for mail fraud. See 18
20 U.S.C. § 1341.

21 Publicly available information indicates that Thomas served as the Lamutt Committee's
22 campaign manager from July 19, 2003 through February 1, 2004, and in that position supervised
23 the day-to-day operation of the campaign and its employees.¹ The available information also

¹ Although publicly available information describes Thomas as the Lamutt Committee's campaign manager, other information indicates that he held the position of deputy campaign manager. It does not appear, however, that anyone else besides Thomas served as the Lamutt Committee's campaign manager.

1 indicates that Thomas was ultimately responsible for the Lamutt Committee's finances, including
2 collecting and recording contributions, tracking disbursements, making deposits into the
3 appropriate bank account and accounting for all receipts. Information obtained by the
4 Commission also indicates that Thomas received the Lamutt Committee's bank statements and
5 appears to have been in charge of account reconciliation. Further, although Lamutt was the
6 Committee's treasurer of record, in actuality Thomas prepared and filed the Lamutt Committee's
7 disclosure reports with the Commission.

8 Information obtained by the Commission indicates that the Lamutt Committee had certain
9 internal procedures designed to restrict staff access to campaign funds. For example, while
10 authorized staffers were permitted to incur nominal campaign related expenditures, all
11 expenditures over that nominal amount required the candidate's approval. Checks for more than
12 \$1,000 drawn on the Lamutt Committee's bank account required two signatures, one of which
13 had to be the candidate's. Additionally, the campaign's staff was prohibited from obtaining a
14 bank debit card on the Lamutt Committee's bank account. There is, however, some conflicting
15 information relating to the level of fiscal oversight employed by the Lamutt Committee.

16 According to a news article, Lamutt "made it a practice to look over his campaign books every
17 week to 10 days." Lisa Getter, *Campaigns Catching Hands in the Till; Amid Record Donations*
18 *and Little Oversight, More Candidates and PACs Become Victims of Embezzlement*, L.A. TIMES,
19 May 31, 2004, at 1. This article, however, does not specify the time period during which Lamutt

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1 employed this practice, nor explains how Thomas was able to continue using the Committee's
2 bank debit card after he was terminated.²

3 Information obtained by the Commission indicates that, notwithstanding the Committee's
4 internal procedures, Thomas embezzled \$34,855 from the Lamutt Committee's bank account
5 between September 2003 and February 2004 by issuing unauthorized checks to himself, his wife,
6 Nancy Trott, and his brother-in-law, Rick Gant.³ Thomas forged the candidate's signature on
7 most of these unauthorized checks. Also, in direct contravention of the Committee's internal
8 procedures, Thomas had a debit bank card issued in the Lamutt Committee's name and used the
9 card to make \$6,072.96 worth of unauthorized purchases. Neither the candidate nor the
10 campaign authorized the payments to Thomas, Trott and Gant or the purchases made with the
11 bank debit card. In an effort to conceal his scheme, Thomas inaccurately reported the Lamutt
12 Committee's disbursements on the 2003 October Quarterly Report, the amended 2003 October
13 Quarterly Report and the 2003 Year-End Report.⁴

14 On January 24, 2006, Thomas pled guilty to one count of mail fraud in violation of
15 18 U.S.C. § 1341 in connection with his embezzlement of Lamutt for Congress campaign funds.

² According to information obtained by the Commission, Lamutt fired Thomas soon after Thomas confessed to stealing funds from the campaign. The available information indicates that Thomas retained the Committee's bank debit card after leaving the campaign, on or about February 1, 2004, and continued using it for at least another 10 days.

³ Publicly available information indicates that Thomas hired his wife and his brother-in-law to work on the campaign. Additional information obtained by the Commission indicates that Gant volunteered for the Committee. However, other information obtained by the Commission indicates that neither Trott nor Gant had employment contracts with the campaign and were not considered employees.

⁴ The Lamutt Committee disclosed unauthorized disbursements in an amended 2003 Year-End Report, the 2004 April Quarterly Report, and an amended 2004 April Quarterly Report. The campaign has not filed amendments to its 2003 October Quarterly Report to reflect any unauthorized disbursements, even though Thomas began embezzling funds during that reporting period.

1 Sentencing is scheduled for October 26, 2006. Press Release, Department of Justice, *Former*
2 *Campaign Manager Pleads Guilty to Defrauding Congressional Campaign*, January 24, 2006;
3 Saed Ahmed, *Campaign Aide Pleads Guilty*, ATLANTA J. CONSTITUTION, January 25, 2006, at
4 D6.

5 **II. LEGAL ANALYSIS**

6 **A. Thomas's Liability**

7 **a. Commingling**

8 Thomas is liable for commingling personal funds through his embezzlement scheme.
9 The Act prohibits the commingling of committee funds with "the personal funds of any
10 individual," including officers of a committee. See 2 U.S.C. § 432(b)(3) and 11 C.F.R. § 102.15.
11 According to publicly available information, Thomas admitted that between September 2003 and
12 February 2004 he embezzled \$40,927.96 from the Lamutt Committee. Thomas designated
13 himself and his wife as the payees of at least \$28,510 in unauthorized checks drawn on the
14 Lamutt Committee's bank account and deposited them into the joint account he shared with his
15 wife. Subsequently, he used the funds for his personal benefit. Thomas improperly transferred
16 Lamutt Committee funds for his own personal use, and in doing so commingled Lamutt
17 Committee funds with his own funds in violation of 2 U.S.C. § 432(b)(3).⁵

18 According to publicly available information, Thomas also admitted that he drew \$6,345
19 in unauthorized checks on the Lamutt Committee's bank account naming his brother-in-law,

⁵ The Commission has previously made reason to believe and probable cause findings for commingling in other matters where an individual has misappropriated committee funds. See, e.g. MUR 2602 (Rhodes) (finding probable cause to believe that the Act was violated when committee funds were deposited into the candidate's personal account) and MUR 3585 (Tsongas) (finding probable cause to believe that the committee's chief fundraiser knowingly and willfully violated the Act by commingling campaign contributions with personal funds).

Gant, as payee. The available information indicates that Gant used these campaign funds for his own personal use. Thomas's improper transfer of \$6,345 in Lamutt Committee funds to Gant resulted in the improper commingling of those funds with Gant's personal funds in violation of 2 U.S.C. § 432(b)(3).

b. Personal Use

Thomas also is personally liable for converting campaign funds for his personal use. The Act prohibits a person from converting contributions or donations to a candidate's authorized committee for his or her personal use. 2 U.S.C. § 439a(b)(1). The Act sets forth examples of *per se* instances of personal use, such as using campaign contributions or donations for mortgages or rental payments, clothing expenses, or household food items. *See* 2 U.S.C. § 439a(b)(2)(A)-(I); *see also* 11 C.F.R. § 113.1(g). In addition, the Act considers a contribution or donation converted for personal use if "the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective" of the campaign. 2 U.S.C. § 439a(b)(2); *see also* AO 2001-9 (explaining that, "if the obligation would exist even in the absence of the candidacy or even if the officeholder were not in office, then the use of funds for that obligation generally would be personal use").

According to publicly available information, Thomas acknowledged converting campaign funds for his own personal use in violation of 2 U.S.C. § 439a(b)(1) by issuing checks worth \$28,510 to himself and his wife and making \$6,072.96 worth of purchases with the secretly procured bank debit card. Based on the available information, it appears that Thomas deposited the checks into a joint account he held with his wife and used the Committee's bank debit card to take cash advances and purchase a variety of items and services incurred irrespective of his

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1 involvement with the Lamutt campaign. by writing checks worth \$28,510 to himself and his wife
2 and depositing them into their joint account, and by making \$6,072.96 worth of purchases with
3 the secretly procured bank debit card, both of which are violations of 2 U.S.C. § 439a(b)(1).
4 Based on the available information, it appears that Thomas deposited funds into his joint account
5 and used the bank debit card to take cash advances and purchase a variety of items and services
6 incurred irrespective of his involvement with the Lamutt campaign. Among Thomas's purchases
7 with the bank debit card were electronics, car repairs, household items, women's clothing, a gym
8 membership and car rentals.

9 Additionally, Thomas is liable for converting \$6,345 in campaign funds for the personal
10 use of Gant in violation of 2 U.S.C. § 439a(b)(1). Although we do not know precisely what Gant
11 used these Lamutt Committee funds for, it is likely under these circumstances that they were used
12 to pay personal bills that were unconnected with any involvement Gant had with the Lamutt
13 campaign.

14 Based on the foregoing, there is reason to believe that Jack Thomas knowingly and
15 willfully violated 2 U.S.C. §§ 432(b)(3) and 439a(b).⁶

⁶ The phrase knowing and willful indicates that "actions [were] taken with full knowledge of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778 (daily ed. May 3, 1976); *see also Federal Election Comm'n v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing and willful"). A knowing and willful violation may be established "by proof that the defendant acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*, 916 F.2d 207, 214 (5th Cir. 1990). Knowing and willful scienter is necessary for criminal liability under the Act. *See* 2 U.S.C. § 437g(d); *see also Faucher v. FEC*, 743, F. Supp. 64, 71 (D. Maine 1990) (Attorney General has criminal enforcement role only for knowing and willful violations); *U.S. v. Tenry*, 433 F. Supp. 620, 622 (D. Maine 1977) (defendants cannot be convicted of violating the Act unless each charged violation was in fact knowing and willful). Therefore, Thomas's admission of criminal guilt in connection with the campaign funds he embezzled from the Lamutt Committee and failed to disclose to the Commission is conclusive proof that the violations at issue were knowing and willful.